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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

**No. 74-1046**

FREDERIKA BLANKNER,

*Petitioner,*

*vs.*

THE CITY OF CHICAGO A MUNICIPAL CORPORATION, ET AL.,

*Respondents.*

## REPLY BRIEF OF PETITIONER.

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*May it Please the Court*:

I.

The City of Chicago Respondents' supplemental statement of facts (City Resp. Br. pp. 3-19) flagrantly misstates facts and ignores the posture of this case. Much of the statement goes outside the allegations of the complaint and outside any record in these proceedings. Petitioner urges this Court to adhere to the record submitted with the Petition for Certiorari so that effective justice may be done. Particularly, petitioner urges this Court to read paragraphs 10 and 11 of the complaint (Pet. App. pp. 38-45). Paragraph 11 lists 16 buildings *owned* by the University, falsely designated as requiring clearance but still standing and in use as of the filing of the complaint herein; and, still standing and in use by the University today—April, 1975.

At no juncture in these proceedings did respondents submit any evidence (including the record of the prior state court con-

demnation proceedings). The City of Chicago Respondents' statements relating to the condition of the Urban Renewal Area (City Resp. Br. pp. 4-5); the improbability that there was no notice or hearing at the time the slum and blight determinations were made (City Resp. Br. pp. 7-8); the conduct at the state court condemnation proceedings (City Resp. Br. pp. 9-13); the status quo of petitioner's building, her rental income, her real estate tax immunity, the City's expenses, and the urban renewal plan (City Resp. Br. pp. 13, 14, and 19) are *all* matters dehors the record, as are the arguments based on such improper assertions and statements.

II.

Petitioner urges that the prior state court condemnation proceedings, which she alleges denied her both procedural and substantive due process, cannot by res judicata either bar her Section 1983 claim or her challenge to the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961 (Pet. pp. 13-22). Respondents skirt the issue; they do not suggest that the state court proceedings afforded petitioner an opportunity to be heard consistent with due process. The underlying policies of Section 1983—that of protecting federal rights from unconstitutional state action—militates against according estoppel effect to that judgment. Due process outlaws it.

Respondents contend that the decision of the court below does not conflict with *Lombard* v. *Board of Education of the City of New York*, 502 F. 2d 631 (2d Cir. 1974), claiming that the due process questions raised in *Lombard* were not previously

NOTE: "Pet." refers to Petitioner's petition for a writ of certiorari;

"City Resp. Br." refers to Brief in Opposition of the City of Chicago Respondents;

"University Resp. Br." refers to Brief in Opposition on Behalf of the University of Chicago, et al.;

"Commission Resp. Br." refers to Brief of Respondents Southeast Chicago Commission, et al.;

"Federal Resp. Br." refers to Memorandum for the Federal Respondents in Opposition.

decided in the state court proceedings (City Resp. Br. pp. 23-27; Commission Resp. Br. pp. 4-5). The Second Circuit's dictum to that effect does not square that decision with that of the court below. In reviewing the state court condemnation judgment, the Illinois Supreme Court summarized and decided petitioner's due process argument as follows, *City of Chicago* v. *Walker*, 50 Ill. 2d 69, 70-71 (1971) *cert. denied sub nom. Blankner* v. *Chicago*, 408 U. S. 931:

> "As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case *erroneously shifted to her the burden of proof* that the area was not slum and blighted, *thus denying her due process* and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.
>
> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a prima facie case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (City of Chicago v. Barnes, 30 Ill. 2d 255; Chicago Land Clearance Com. v. Quinn Home Builders, 11 Ill. 2d 111), and *the trial court did not err* in denying the traverse and motion." (Emphasis ours.)

The due process questions petitioner raises here were no more decided by the state court than they were in *Lombard*, which was recently reaffirmed by *Newman* v. *Board of Ed. of City Sch. Dist. of N. Y.*, 508 F. 2d 277 (2d Cir. 1975).

Nothing in respondents' briefs suggests that the decision of the court below does not conflict with *Mack* v. *Florida State Board of Dentistry*, 430 F. 2d 862 (5th Cir. 1970) *cert.*

*denied* 401 U. S. 960. The Fifth Circuit in *Mack* did not consider it necessary to determine the precise issues decided in prior state court proceedings. It examined the *nature* of the prior proceedings—whether they afforded an opportunity to be heard consistent with due process—in deciding whether to accord them preclusion effect.

## III.

Respondents suggest that the issues petitioner raises here are the same as those previously presented in a petition for certiorari taken from the judgment of the Illinois Supreme Court (City Resp. Br. p. 3; University Resp. Br. pp. 1-5; Commission Resp. Br. pp. 6-7). The very nature of the issues raised here—relating to the res judicata effect of prior state court proceedings in a Section 1983 claim, the right to a federal forum to litigate constitutional challenges to urban renewal, the requirements of Rule 23 of the Federal Rules of Civil Procedure, and the meaning of the term "state statute" in 28 U. S. C. § 2281—belies the contention.

Nothing in respondents' briefs answers petitioner's arguments that:

(i) the holding of the court below forecloses federal review of state urban renewal procedures even though violations of federally guaranteed rights are claimed under Section 1983 (Pet. pp. 22-24); City of Chicago Respondents admit as much (City Resp. Br. p. 27);

(ii) the court below erred in holding that an essential element of petitioner's Section 1983 claim was that the urban renewal area was not slum and blighted and in effect condones the violation of civil rights to achieve an end which could have been achieved by lawful means (Pet. pp. 24-25).

## IV.

The order of the Court of Appeals denying petitioner's petition for rehearing was entered on November 21, 1974. The 90-day period provided by 28 U. S. C. § 2101(c) expired on February 19, 1975; and, the petition was filed on February 20, 1975.

Petitioner's petition was printed in time to file within the period allowed and petitioner had, in good faith, made arrangements for the filing of the petition within the 90-day period. The filing of the petition one day late was due to circumstances beyond her control.

Upon learning that the petition was filed one day late, counsel for petitioner filed a motion to extend the time by one day within which to file the petition. Affidavits of petitioner's counsel and the printer and a letter from the air freight delivery service were attached.

The Federal respondents (Fed. Resp. Br. p. 1) contend that the late filing deprives this court of jurisdiction of this matter. 28 U. S. C. § 2101(c) permits the time within which to file a petition for a writ of certiorari to be extended up to sixty days. Petitioner's petition was filed well within that time. Petitioner seeks that the requirement of Rule 34(2) of the Rules of the Supreme Court, namely, that a motion to extend the time to file a petition be filed within the period sought to be extended, be waived in this case. This court has previously held that its Rules are not jurisdictional, *Schacht* v. *United States*, 398 U. S. 58, 63-65.

Petitioner respectfully submits that the late filing of her petition for a writ of certiorari does not deprive this Court of jurisdiction over this matter.

## CONCLUSION.

Petitioner respectfully requests that the Petition for Writ of Certiorari be granted for the reasons stated therein.

Respectfully submitted,

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